IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

WP(C).No. 12532 of 2004(P)

OS.181/2001 of MUNI-MAGI.COURT,THODUPUZHA
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PETITIONER:

M/S.MOTOR & GENERAL FINANCE LTD.
M.G.F. HOUSE, 17 B ASAF ALI ROAD, NEW DELHI,
REP. BY ITS GENERAL MANAGER, UMESH SANAN.

BY ADV. SRI.G.HARIHARAN

RESPONDENT:

A.H.FIROSE KHAN, S/O.HAMEED RAWTHER,
ANTHEENATTU HOUSE, OLAMATTOMKARA, THODUPUZHA.

BY ADV. SRI.THOMAS M.JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE OCPY OF THE HIRE PURCHASE AGREEMENT EXECUTED BY SRI.K.K.SALIM RELATING TO VEHICLE NO.KL 7 Q 7245 (REGISTRATION NUMBER WAS ASSIGNED LATER BY THE MOTOR VEHICLE AUTHORITIES)

EXT.P2 : TRUE COPY OF HIRE PURCHASE AGREEMENT RELATING TO VEHICLE NO.KL 7 P 3492 (REGISTRATION NUMBER ASSIGNED LATER).

EXT.P3 : TRUE COPY OF THE INVOICE NO.3288 DT.28.02.97 ISSUED FROM M/S.SAKTHI FINANCE LTD.

EXT.P4 : TRUE COPY OF THE INVOICE NO.1947 DT.25.10.96 ISSUED BY M/S.SAKTHI FINANCE LTD.

EXT.P5 : TRUE COPY OF THE IA 1384/03 IN OS NO.181/01 ON THE FILES OF THE MUNSIFF COURT, THODUPUZHA.

EXT.P5(A) : TRUE COPY OF THE ORDER MADE IN IA NO.1384/03 BY THE MUNSIFF COURT, THODUPUZHA.

EXT.P6 : TRUE COPY OF THE JUDGMENT IN OS NO.181/01 DATED 27.11.03 IN THE FILES OF THE MUNSIFF COURT, THODUPUZHA.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 12532 OF 2004

Dated this the 30th day of July, 2007

JUDGMENT

Not that I do not find any merit in the submission of Sri.Thomas M.Jacob that in view of Ext.P6 judgment the proper remedy available to the petitioner is a regular appeal. But I am of the view that in view of the principles laid down in **Kailash v. Nanhku** [2005(2) KLT 623], there is justification for setting aside both Exts.P5(a) and P6. But since it is clear from the various documents placed on record by the respondent through their counter affidavit and by some of documents placed by the petitioners themselves that there was no diligence at all on the part of the petitioners in the matter of defending the suit, the same will be only on very strict terms. Accordingly, I set aside Exts.P5(a) and consequently Ext.P6 judgment also and direct the learned Munsiff to receive the written statement filed by the petitioner on file, formulate issues thereon and dispose of the suit in accordance with law subject to the following conditions:

The petitioner shall pay a total amount of Rs.5,000/-, out of which Rs.3,500/- will be paid to the party respondents either directly or through their counsel appearing in the court below or in this court and Rs.1,500/- will be paid to the High Court Legal Services Committee within a period

of one month from today. If payments as directed above are not paid, both Exts.P5(a) and P6 will stand confirmed and the Writ Petition will stand dismissed completely. Once payment is made and the benefits of this judgment become available to the petitioner, the learned Munsiff will formulate issues on the basis of the contentions raised in the written statement and try and dispose of the suit in accordance with law.

PIUS C. KURIAKOSE, JUDGE

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